IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition Nos.644 to 650 of 2007

T. Pushpavathi .. Petitioner in H.C.P.No.644/2007

Gandhi .. Petitioner in H.C.P.No.645/2007

A. Sekar .. Petitioner in H.C.P.No.646/2007

S. Sathyaseelan .. Petitioner in H.C.P.No.647/2007

Lidwin .. Petitioner in H.C.P.No.648/2007

Yogeswaran .. Petitioner in H.C.P.No.649/2007

Sivasubramanian .. Petitioner in H.C.P.No.650/2007

Vs

1. Union of India
   rep. through its Secretary to Govt.
   Home Affairs (Department of
   Internal Security)
   North Block, New Delhi-1.

2. State of Tamilnadu
   rep. through its Secretary to Govt.
   (Public (L&O-F) Department
   Fort St. George, Chennai 600009.

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3. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 600008. .. Respondents in
   all the petitions

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus, calling for the records pertaining to the order of detention dated 28.2.2007 passed by the third respondent vide order Nos.3, 6, 8, 4, 7, 2 and 5 of 2007 as approved by the 2nd respondent and quash the same and produce the body of the detenues, viz., Selvasendhan @ Sendhan, Bharathidasan @ Bharathi, Gridhar, Sathish @ Nithi, Veluchamy @ Prabhakaran, Sivakaran @ Siva and Karan @ Yogaraj before this Court and set them at liberty forthwith from Central Prison, Puzhal, Chennai.

For Petitioner : Mr.S.Manoharan
For Respondents-1 : Mr.Y.Bhuvanesh Kumar
SCGSC-R1
For Respondents-2&3 : Mr.N.R.Elango
Additional Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

All the Habeas Corpus Petitions filed on behalf of the detenus were heard together and are being disposed of by this common order, as the basic allegations are common.

2. The orders of preventive detention have been passed by the third respondent herein vide order Nos.3, 6, 8, 4, 7, 2 and 5 of 2007 dated 28.2.2007, in respect of each detenu, in exercise of the powers conferred under sub Section (2) of Section 3 of the National Security Act, 1980 (Central Act 65 of 1980) (hereinafter referred to as 'the Act') read with orders issued by the Government in G.O.Ms.No.41, Public (Law and Order-F) Department dated 11.1.2007 under sub-section (3) of Section 3 of the said Act.

3.1. The ground case, on the basis of which the detaining authority viz., the Commissioner of Police, passed the impugned detention orders, is that the Inspector of Police, 'Q' Branch CID, Chennai City, based on the reliable information that Srilankan Nationals, namely, Sivakaran @ Siva, Selvasendhan @ Sendhan, Karan @ Yogaraj, Sathish @ Nithi, Bharathidasan @ Bharathi and drivers Jayavel, Rasheed Ahammed and Mayilvahanan were loading explosive materials in a

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mini lorry at M/s.Jahan Travels, situated at Naval Hospital Road, Periyamedu, Chennai, suspiciously registered a case in Crime No.1 of 2007 under Section 120-B I.P.C., Sections 10 and 13(1)(2) of Unlawful Activities (Prevention) Act, 1967, Section 5 of the Explosive Substances Act and Section 14 of Foreigners Act. The Deputy Superintendent of Police, 'Q' Branch CID, Chennai City, took up the investigation and proceeded to M/s.Jahan Travels, Naval Hospital Road, Periyamedu, Chennai along with police party. On the way, they noticed a mini lorry bearing Registration No.TN-45-S-7534 and a Tata Indica Car bearing Registration No.TN-45-AF-6852 at the junction of EVR Road and Naval Hospital Road. On suspicion, police intercepted the said vehicles and they found the detenues in HCP.Nos.644, 645, 647, 649 and 650 of 2007, viz., Selvasendhan @ Sendhan, Bharathidasan @ Bharathi, Sathish @ Nithi, Sivakaran @ Siva and Katran @ Yogaraj and their associates, 40 gunny bags containing iron balls, a sum of Rs.5 lakhs cash and cell phones in three numbers in the said vehicles. The Deputy Superintendent of Police seized the abovesaid material objects under a mahazar, arrested the detenus and their associates and remanded them to judicial custody.

3.2. During police custody, the Deputy Superintendent of Police recorded the confession statements of the detenus in HCP.Nos.644, 649 and 650 of 2007. Based on the confession statement of the detenu in HCP.No.649 of 2007, 50 bags of iron balls, a sum of Rs.17,125/- and two cell phones were recovered. Based on the confession statement of the detenu in HCP.No.644 of 2007, two cell phones and four credit cards were recovered. As per the confession statement of the detenu in HCP.No.650 of 2007, two cell phones were recovered.

3.3. Subsequently, the Inspector of Police arrested the detenu in HCP.No.648 of 2007 on 24.1.2007 and recorded his confession statement. Based on his confession statement, 60 bags of iron balls and a cell phone were recovered and one Giridhar, the detenu in HCP.No.646 of 2007 was arrested. Based on the confession statement of the detenu in HCP.No.646 of 2007, a country made boat with 16 HP kirloskar diesel engine was recovered.

3.4. Investigation reveals that the detenus in HCP. Nos. 644, 645, 647, 649 and 650 are the members of the LTTE and as per the direction of leaders of LTTE, they conspired together and procured explosive materials, steel balls, diesel, battery and other items from Tamil Nadu and smuggled it to Srilanka for the past three years. Even during December 2006, they procured 14.5 tonnes of iron balls from Mumbai and smuggled the same to Srilanka.

3.5. The detenu in HCP.No.648 of 2007, who is an active worker in the Tamilar Desiya Iyakkam, which is a banned organisation, knowing fully well helped in storing and transporting explosive materials for the use of LTTE at Srilanka clandestinely.

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3.6. On the basis of these facts, the detaining authority has concluded:

> "20. Investigation reveals that the iron balls seized from them were used as pellets in land mines and bombs by the LTTE for more impact. Illicit transportation of explosive materials and possession in the hands of such anti national elements will really post threat to Security of the State and also the maintenance of public order.
>
> 21. On perusal of confession statements of Tvl. Sivakaran @ Siva, Selvasendhan @ Sendhan, Karan @ Yogaraj, Sathish @ Nithi and Bharathidasan @ Bharathi, I am satisfied that they belong to LTTE group and procured iron balls from Mumbai and smuggled to LTTE in Srilanka through Tuticorin and Ramanathapuram coastal area. Further, they knowing fully well that he with his associate procuring iron balls which are used as pellets in land mines and bombs and supplying to the banned LTTE organisation and thus they have acted in a manner prejudicial to the security of the State and prejudicial to the maintenance of public order.
>
> 22. Similarly, I am satisfied that Tr.Veluchamy @ Prabhakaran who is an active member of the Tamizhar Desiya Iyakkam, which is a banned organisation, knowing fully well helped in storing and transporting explosive materials i.e. iron balls, diesel, battery, charcoal powders, CDs etc. for the use of LTTE at Srilanka clandestinely and Tr.Giridhar, who is a resident of Rameswaram, knowing fully well helped the LTTE in transporting explosive materials i.e. iron balls, diesel, battery, charcoal powder, CDs etc. for the use of LTTE at Srilanka clandestinely and thus they have acted in a manner prejudicial to the Security of the State and maintenance of public order.

3.7. The detaining authority, the third respondent herein, taking note of the above ground case and having satisfied that the activities of the detenus herein are prejudicial to the maintenance of public order and that there is compelling necessity to detain them under Section 3(2) of the National Security Act 1980 (Central Act 65 of 1980, in order to prevent them from indulging in such further activities in future which are prejudicial to the security of the State and maintenance of public order, ordered his detention.

4. The learned counsel for the petitioner contends that even assuming the detenus procured the materials and smuggled them to Srilanka clandestinely, the same cannot be termed as an act prejudicial to the security of the State and maintenance of the public order and

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therefore, the impugned order of detention is vitiated.

5. We have heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for for respondents. We have also perused the entire materials placed before us.

6. Admittedly, the detenus had procured iron balls used for bombs and smuggled them to Srilanka clandestinely in order to help the LTTE, a banned organisation in India. But, we are of the considered opinion that such assistance rendered by the detenus to the LTTE, a banned organisation, for illicit transportation, by itself, would not amount to an act prejudicial to the maintenance of the public order, nor would amount to pose threat to the security of the State as long as they are not used in India.

7. Our view is fortified with the decision of a Division Bench of this Court in Thangavadivel vs. Government of Tamil Nadu (1992 L.W. (Crl.) 43).

8. The Madurai Bench of Madras High Court has also taken the same view in respect of the similarly placed detenu in H.C.P. (MD) No.263 of 2007, dated 14.9.2007 (Bhakeerathan @ Eelavan v. State of Tamil Nadu, rep. by its Secretary to Government, Public (Law & Order-F) Department, Chennai-9 and two others).

9. In view of the above, the impugned orders of detention dated 28.2.2007 are set aside and the habeas corpus petitions are allowed. The detenus are directed to be released forthwith unless their presence is required in connection with any other case.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Govt.
   Union of India
   Home Affairs (Department of
     Internal Security)
   North Block, New Delhi-1.

2. The Secretary to Govt.
   State of Tamilnadu
   (Public (L&O-F) Department
   Fort St. George, Chennai 600009.

3. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 600008.

4.The Joint Secretary to Govt.
Public (Law and Order) Fort St.George,
Chennai-9.

5. The Superintendent
   Central Prison
   Puzhal, Chennai.

6. The Public Prosecutor
   High Court, Madras.

+7ccs to Mr.S.Manoharan, Advocate Sr 68140 to 68143 & 68153 to 68155

+7ccs to Mr.Y.Bhuvanesh Kumar, SCGSC Sr 68801 to 68804, 68744,68768 and 68806

MA (CO)
km/20.12.

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